

VIOLA J. KIRKWOOD

IBLA 77-388

Decided September 16, 1977

Appeal from a decision of the Utah State Office, Bureau of Land Management, requiring payment of additional advance rental in connection with appellant's noncompetitive oil and gas lease offer, U-31254.

Affirmed.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Noncompetitive Leases--Oil and Gas Leases: Rentals--Regulations: Applicability

The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, does not create a right to a lease immune from application of a subsequently amended administrative regulation. An increased rental rate is properly applied to an oil and gas lease offer pending before the effective date of the rate change but which has not been accepted prior to that time.

APPEARANCES: Viola J. Kirkwood, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

This appeal is brought from a decision of the Utah State Office, Bureau of Land Management (BLM), dated February 15, 1977, requiring payment of additional advance rental in the amount of \$116 in connection with appellant's noncompetitive oil and gas lease offer (U-31254). The decision was based upon a revised regulation amending the annual lease rental rate from \$.50 per acre to \$1 per acre for "leases issued on and after February 1, 1977," which was published in the Federal Register on January 5, 1977. 43 CFR 3103.3-2(a), 42 F.R. 1033 (January 5, 1977).

Appellant asserts in her statement of reasons for appeal that the former rental rate should apply to her lease offer since her offer was filed and received first priority in a drawing held in September of 1975, at a time when the rental rate was \$.50 per acre, and the regulation revising the rental rate did not become effective until February 1, 1977.

The case file discloses that appellant's noncompetitive oil and gas lease offer received first priority in a drawing of simultaneously filed oil and gas lease offers for parcel number U-261 in the September 1975 list of available lands posted by the Utah State Office. Appellant was initially billed for advance lease rental in the amount of \$116 computed at the rate of \$.50 per acre. Appellant paid this sum on October 1, 1975. Processing of the lease offer was subsequently delayed pending development of stipulations for protection of the environment. Consequently, no lease was issued by February 1, 1977.

The issue raised by this appeal is whether the filing of a noncompetitive oil and gas lease offer gives the offeror a right to a lease at the rental rate set by the regulations at the time the offer is filed where the regulation is revised to amend the rental charge after the offer is filed but prior to lease issuance.

Section 32 of the Mineral Leasing Act, 30 U.S.C. § 189 (1970), authorizes the Secretary of the Interior to prescribe necessary and proper rules and regulations and to do all things necessary to effectuate the purposes of the Act. The regulation governing the annual rental charge for noncompetitive oil and gas leases has been revised pursuant to this authority.

[1] The filing of an application for a noncompetitive oil and gas lease, prior to acceptance, 1/ does not create a right to a lease which is immune from application of a subsequently amended administrative regulation. Hannifin v. Morton, 444 F.2d 200, 203 (10th Cir. 1971); Schraier v. Hickel, 419 F.2d 663 (D.C. Cir. 1969); Barbara A. Joeckel, 30 IBLA 376, 377 (1977); Raymond N. Joeckel, 29 IBLA 170, 173 (1977). Thus, it was proper to apply the revised rental rate required by the amended regulation to appellant's lease offer.

As quoted in Milton J. Lebsack, 29 IBLA 316, 318 (1977), the Secretary of the Interior in considering the matter of the application

1/ Acceptance of the offer and issuance of the lease is indicated by the signature of the authorized officer of the BLM. 43 CFR 3111.1-1(c); McDade v. Morton, 353 F. Supp. 1006 (D.D.C. 1973), aff'd, 494 F.2d 1156 (D.C. Cir. 1974).

of the revised rental rate to lease applications pending prior to the change in regulation stated:

Although it might appear that applicants for oil and gas leases pending prior to February 1, 1977 have been treated unfairly under the Amended Regulations, it is important to note that there is an established precedent in the Department, reinforced by Court decisions, which dictates that no rights or responsibilities attach to a lease applicant until the lease is actually issued. [2]

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Anne Poindexter Lewis
Administrative Judge

We concur:

Joan B. Thompson
Administrative Judge

Douglas E. Henriques
Administrative Judge

2/ Excerpt from letter of February 1, 1977, by Secretary Cecil D. Andrus to United States Senators Mike Gravel, James McClure, Paul Laxalt, Orrin Hatch, Malcolm Wallop, John Melcher, Jake Garn and Howard Cannon.

